

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/07/2003

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.1455 of 2002

Vellingiri .. Appellant

-Vs-

State rep. by the
Inspector of Police
Karamadai Police Station
Coimbatore District
Crime No.12/97. .. Respondent

This criminal appeal is preferred under Sec.374(2) of The Code of Criminal Procedure against the judgment of the Additional Sessions Judge (Fast Track Court No.V), Coimbatore at Tiruppur made in S.C.No.100 of 2000 and dated 24.6.2002.

!For Appellant : Mr.V.Parthiban

^For Respondent : Mr.V.Jaya Prakash Narayanan
Government Advocate (Crl. Side)

:JUDGMENT

This is an appeal by the sole accused in a case of rape, wherein he stood charged, tried and found guilty under Sec.376 of the Indian Penal Code and sentenced to undergo 7 years R.I. and to pay a fine of Rs.1,000/-, in default, to undergo 1 year R.I.

2. The short facts necessary for the disposal of this appeal can be stated thus:

(a) P.W.6 Savithri and P.W.7 Sivanappa, the residents of Velliankadu Village, were mother and father of the young victim. P.W.3 Pushpa, the young victim of 16 years old, was also living with them. The appellant/accused belonged to the same Village. He used to go along with P.W.3 for looking the goats at the time of grazing. On 12.1.1997, P.W.3 along with P.W.4 Chinnasamy and one other person by name Pappa went to Mangal Kuzhi for looking their goats grazing. At about 3.00 P.M., the accused asked P.W.4 and the other Pappa to move their goats to some other place. Taking advantage of their absence, the accused took P.W.3 to a remote place, committed the sexual assault on her forcibly and went away from the scene of occurrence. At about 3.30 P. M., P.W.3 came to her house and informed to P.W.4, P.W.5 Vijaya, P.W.6 , P.W.7 and P.W.13 Rangasamy. Then she proceeded to Karamadai Police

Station and lodged a complaint marked as Ex.P3.

(b) On the basis of the complaint, P.W.15 Kanagarajan, Sub Inspector of Police registered a case in Crime No.12/97 under Sec.376 of I.P. C. Ex.P9 express F.I.R. was despatched to the concerned Judicial Magistrate's Court. At about 8.45 P.M. P.W.16 Dhinakaran, Inspector of Police, took up the investigation on receipt of the copy of the F.I.R. On 13.1.1997 at about 1.45 A.M., P.W.3 victim was medically examined by P.W.1 Dr.Vasanth Gokilam and P.W.17 Dr.Santha Arulmozhi, both attached to the Government Hospital, Mettupalayam. The copies of the accident registers are marked as Exs.P1 and P13 respectively. P.W.16 Inspector of Police proceeded to the Government Hospital, Mettupalayam, examined P.W.3 and recovered M.O.1 inner petticoat, M.O.2 petticoat and M.O.3 jacket of the victim under Ex.P7 mahazar in front of P.W.13 and the other witness.

(c) On 13.1.1997 at about 5.30 A.M. P.W.16 arrested the accused and recovered M.O.4 shirt and M.O.5 trouser of the accused under Ex.P8 mahazar in front of P.W.8 Baghyam, Village Administrative Officer and other witness. The accused was sent for judicial custody. On 13.1.19 97 at about 9.15 A.M., he proceeded to the site of occurrence, made an inspection and prepared Ex.P5 observation mahazar and Ex.P10 rough sketch. He examined P.Ws.4 to 8, P.W.11 Jeevanandan, P.W.13 and P.W.14 Varadan and recorded their statements. P.W.16 made a request before the Judicial Magistrate for sending the victim for medical examination. On 14.1.1997 at about 1.30 P.M., P.W.2 Dr.Meerabai attached to the Government Hospital, Coimbatore examined P.W.3 as per the orders of the Judicial Magistrate, Palladam and issued Ex.P2 copy of the accident register. A requisition was also made by P.W.16 to the Judicial Magistrate for sending the M.Os.1 to 5 for chemical analysis. Accordingly they were sent for chemical examination, and a report was received under Ex.P12. On 14.3.1997, P.W.16 examined P.W.1, P.W.2, P.W.17 and P.W.12 Dr.Natarajan and recorded their statements. On completion of the investigation, P.W.16 filed a charge sheet against the accused under Sec.376 of The Indian Penal Code.

3. In order to prove the charge levelled against the appellant/ accused, the prosecution examined 17 witnesses and marked 13 exhibits and 5 material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under Sec.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. 3 defence witnesses were examined, and no exhibits or material objects were marked. On consideration of the rival submissions and scrutiny of the available materials, the trial Court found the appellant/accused guilty of the charge against him under Sec.376 of I.P.C. and sentenced him to undergo imprisonment as referred to above. Aggrieved appellant has brought forth this appeal.

4. Arguing with vigour and vehemence for the appellant, the learned Counsel Mr.V.Parthiban raised the following points for consideration by this Court.

Even as per the case of the prosecution, the only witness, whose evidence was relied on, was that of the victim examined as P.W.3. It remains uncorroborated by any evidence. A perusal of the evidence of P.Ws.1, 2 and 17

Doctors would clearly show that the medical evidence has not corroborated the ocular testimony; that the prosecution case is false and that the accused has been falsely implicated. When the evidence of the other witnesses are subjected to careful scrutiny, it would be quite evident that there are lot of inconsistencies and discrepancies, and the lower Court should not have relied on such discrepant evidence. There was delay in lodging the complaint, which would go to affect the prosecution case.

5. Added further the learned Counsel that if the Court comes to the conclusion that the prosecution has proved its case, in view of the evidence available, the Court has to show leniency in the sentence awarded by the lower Court.

6. Opposing strongly all the contentions put forth by the appellant's side, the learned Government Advocate (Criminal Side) Mr.V.Jaya Prakash Narayanan would represent that the Prosecutrix evidence was so cogent and clear; that it was she who gave the complaint; that she was immediately examined by P.Ws.1 and 17 Doctors, to whom she has given the statement as to how the offence was committed; that the victim was medically examined by P.W.2 Doctor; that the evidence of the Medical Officers and the certificates issued by them would corroborate the evidence of the victim; that all the other witnesses have spoken to the necessary facts; that a perusal of the evidence of the prosecutrix coupled with the evidence of the Medical Officers would clearly show that the prosecution has proved its case beyond reasonable doubt, and hence, the judgment of the lower Court has got to be sustained, and the appeal be dismissed.

7. A careful consideration of the rival submissions and a thorough appraisal of the materials available before this Court would lead to the irresistible conclusion that the trial Court was perfectly correct in recording a finding that the appellant was guilty of the charge of rape.

8. As could be seen above, P.W.3 aged 16 years, the daughter of P. Ws.6 and 7, on the date of occurrence namely 12.1.1997 went along with P.W.4 and one Pappa for looking after the grazing goats, and at the place, where the goats were grazing, the accused was available, and he informed P.W.4 and the said Pappa to take their goats to some other place, which was accordingly done by them, and taking advantage of the solitude of the victim P.W.3, he took her aside and forcibly committed the sexual violence on her. P.W.3, the victim has given a graphic narration of the sexual violence committed on her. Her evidence is cogent and acceptable, since it inspires the confidence of the Court. It is pertinent to note that it was she who gave the complaint marked as Ex.P3, at 8.00 P.M. within a few hours from the time of occurrence, wherein she has narrated the entire incident. On the strength of the said complaint, a case was registered by P.W.15 Sub Inspector of Police. It remains to be stated that the Express F.I.R. has also been sent immediately to the concerned Ju dicial Magistrate's Court. The victim was subjected to medical examination at 2.15 A.M. on 13.1.1997, during which she has clearly stated the incident, which was recorded by P.W.17 Doctor. In Ex.P13, the Medical Officer has clearly recorded thus:

"Alleged to have been sexually assaulted by a known person at 3 P.M. on 12.1.97 near Mangal Kuzhi Velliangadu"

P.W.3 victim was examined by P.W.17 Doctor attached to the Government Hospital, Mettupalayam. During examination, the Doctor found on the victim that pubic hair was present, and no axillary hair was seen, and breast

development was normal. Apart from that, the Doctor has mentioned in Ex.P13 number of abrasions on different parts of the body of the victim. All these things would clearly go to show that the case that was projected by the prosecution through P.W.3 victim was true. The medical evidence adduced through P.Ws.1, 2 and 17 and the certificates issued by them stands a good piece of evidence in support of the ocular evidence of the victim. Under such circumstances. the Court is unable to agree with the contention put forth by the appellant's side that the ocular evidence was not corroborated by the medical evidence.

9. It remains to be stated that a girl of this age, who belonged to a particular tradition-bound non-permissive society as in India, would be especially reluctant even to admit that any incident which is likely to reflect upon her modesty and chastity, had occurred, she being conscious of the danger of being ostracised by the society thereafter. The evidence of prosecutrix as stated above would clearly reveal that she was subjected to sexual violence as put forth by the prosecution, and the same has been not only corroborated by the medical evidence, but also by the other facts and circumstances of the case. In such conditions, the minor contradictions though present in the evidence of the witnesses, need not be attached with any importance at all. Hence, the trial Court was perfectly correct in rendering a conviction under Sec.376 of I.P.C. against the appellant/accused.

10. Coming to the question of punishment, the lower Court has awarded the minimum sentence of 7 years R.I. to the appellant/accused. The Court is unable to notice any special reason which could be recorded for reducing the sentence, as required under the said provision of law. In the instant case, the victim was only 16 years old at the time of occurrence, and the appellant/accused was 25 years old that time. Therefore, in the absence of any special reason, the Court is not inclined to show any leniency by making any reduction in the sentence already imposed by the lower Court. Hence, the judgment of conviction and sentence passed by the lower Court has got to be necessarily sustained.

11. In the result, this criminal appeal fails, and the same is dismissed, confirming the judgment of the lower Court.

Index: Yes

Internet: Yes

To:

- 1) The Additional District Sessions Judge (Fast Track Court No.5), Coimbatore at Tiruppur.
- 2) The Principal Sessions Judge, Coimbatore.
- 3) The Superintendent, Central Prison, Coimbatore.
- 4) The Public Prosecutor, High Court, Madras.
- 5) The D.I.G. of Police, Chennai 4.
- 6) Mr.V.Jaya Prakash Narayanan, Government Advocate (Crl. Side), High Court, Madras.
- 7) The Inspector of Police, Karamadai Police Station, Coimbatore.

nsv/

